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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

YAIR DE LA ROSA,

Defendant and Appellant.

D076726

(Super. Ct. No. SCD276668)

APPEAL from a judgment of the Superior Court of San Diego County, Estaban Hernandez, Judge. Affirmed.

Lizabeth Weis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

**FACTUAL BACKGROUND**

At approximately 6:54 p.m. on April 8, 2018, San Diego Police Officers Gabriela Ortega and Jennifer Gregory responded to a 911 call that two men were throwing rocks at each other on University Avenue in Hillcrest, and

onto the onramp to Freeway 163. The officers responded to the scene but found nobody matching the description given of the individuals.

Shortly afterward, as Scott T. and Cody E. were walking home from dinner about two blocks away from the rock-throwing incident, they observed an individual attack another person with a knife. The men were punching and hitting each other. Scott called 911 at 7:17 p.m. to report the incident. The victim of the knife attack ran and the person assaulting him ran after him

After responding to look for rock throwers, Officers Ortega and Gregory responded to 911 calls about a stabbing at the intersection of University and Richmond in Hillcrest. They found a victim, James J., bleeding heavily from a head wound. A knife, which was the blade of a kitchen knife, was lodged in the top left side of his head. James was in a state of shock, was moderately coherent, and was able to articulate only certain things. He had lost about half of his blood volume. Officer Ortega found a hand-sized rock in James's pants pocket. The officer believed James had been involved in the earlier report of rock-throwing.

In the trauma center at the hospital, it was determined James's face was paralyzed on the left side, and his 7th nerve was severed. The nerve controls all facial muscles, expressions, the left major salivary gland, and the left ear canal. He could not close his left eye. The complications continued a year later.

On April 29, 2018, defendant attacked his friend Russ M. with a knife defendant grabbed from the kitchen where they resided. A knife was never found, but Russ testified a knife was missing from the butcher block in the kitchen. Russ called 911 and told the dispatcher his boyfriend was "the guy they were looking for, the one that stabbed the guy up in Hillcrest." Russ did

not tell the dispatcher he had been stabbed, but afterward he ran into the courtyard calling for help and witnesses saw him bleeding.

Russ was transported to a hospital, where his blood alcohol level in the emergency room about seven hours after the incident was 0.18. He had an orbital fracture, and a laceration on the top of his head. At the time of trial, Russ still suffered from head pain and blurred vision.

The April 8 stabbing incident was recorded by surveillance cameras on a house near the crime scene. A Crime Stoppers bulletin using an image of the suspect from the video was released to the media. The surveillance video (Exhibit 13) was played for the jury. Defendant was identified as a result thereof and was arrested.

### PROCEDURAL BACKGROUND

Defendant was charged with seven offenses. As to the April 8 attack on James, he was charged in counts 1, 2, and 3 with attempted premeditated murder (Penal Code<sup>1</sup> §§ 187, subd. (a), 189 & 664), with allegations he personally used a knife (§ 12022, subd. (b)(1)) and inflicted great bodily injury (§12022.7, subd. (a)); with mayhem (§ 203)), with an allegation he personally used a knife ( § 12022. subd. (b)(1)); and with assault with a deadly weapon (§ 245, subd. (a)(1)), with the added allegation he inflicted great bodily injury (§ 12022.7, subd. (a)).

In counts four, five, six and seven, involving victim Russ, defendant was charged with attempted premeditated murder (§§ 187 subd. (a), 189 & 664), with allegations he personally used a knife (§ 12022, subd. (b)(1)) and inflicted great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)); first degree burglary (§§ 459 & 460 subd. (a)), with the

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

allegations someone other than an accomplice was present (§§ 667.5, subd. (c) (21)), that he personally used a knife (§ 12022, subd. (b)(1)), and inflicted great injury under circumstances involving domestic violence (§ 12022.7, subd. (e)); assault with a deadly weapon (§ 245, subd. (a)(1)), with the allegation he inflicted great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)); and with corporal injury to a spouse/roommate (§ 273.5, subd. (a)), with allegations he personally used a knife (§ 12022, subd. (b)(1)) and inflicted great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)). It was further alleged defendant had suffered a prior strike conviction from 2002 when he was 17 years old.

On August 12, 2019 a jury found defendant guilty of counts 1-3 involving James: attempted murder, mayhem, and assault with a deadly weapon. It also found true the associated allegations he used a knife and inflicted great bodily injury. The jury also found defendant guilty of one count of corporal injury to a spouse or roommate and found true he inflicted great bodily injury on Russ. The jury found not true the allegation defendant used a knife and found him not guilty of the remaining counts as to Russ. Defendant admitted the prior strike.

On October 4, 2019, defendant was sentenced to prison for 17 years plus life with the possibility of parole after 14 years. He was ordered to pay a court security fee of \$160; a criminal assessment fee of \$120; a criminal justice administration fee of \$154, and \$225 in restitution under section 1202.4, subdivision (f). Restitution under section 1202.4, subdivision (b) was stayed pending a determination of defendant's ability to pay.

A timely notice of appeal was filed.

## DISCUSSION

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d436 (*Wende*) and asks this court to review the record as required by *Wende*. To assist the court in its review of the record, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified possible issues considered in evaluating the potential merits of this appeal.

We have reviewed the entire record as mandated by *Wende*. We have not discovered any arguable issues for reversal on appeal.

Defendant has been notified of his right to file a supplemental brief and has declined.

Competent counsel has represented defendant on this appeal.

## DISPOSITION

The judgement is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

IRION, J.